



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(126)

CR-3661-2026

Date of decision: - 30.04.2026

Ram Gopal

....Petitioner

Versus

Sumit Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner.

VIKAS BAHL, J. (ORAL)

CHALLENGE IN THE PRESENT REVISION PETITION

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 07.04.2026 (Annexure P-6) passed by the Civil Judge (Junior Division), Moga, vide which the application filed by the plaintiff/respondent No.1 to prove the Memorandum of Partition dated 26.02.2017 by way of secondary evidence has been allowed.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that a perusal of the plaint would show that the petitioner is shown as defendant No.8 in the suit and in the said plaint, it has been averred in paras 4 and 5 that the dispute in question is between family members and the said dispute was resolved between the family of Nasib Chand about 30 years



ago by way of oral family settlement and that later on the said oral family settlement which had been effected between the parties was reduced into writing on 26.02.2017 by way of 'Yaadasht Takseem' i.e. Memorandum of Partition. It is submitted that the said alleged Memorandum of Partition is annexed as Annexure P-2 and a perusal of the same would show that the petitioner has not signed the same. It is stated that the issues were framed on 20.01.2026 and immediately thereafter the plaintiff had filed an application for allowing the plaintiff to prove the Memorandum of Partition dated 26.02.2017 by way of secondary evidence.

3. It is argued that in the said application, it had only been mentioned that the original 'Yaadasht Takseem' had been misplaced by the plaintiff so the plaintiff could not produce the same and no further details were given. It is further submitted that the said application has been allowed vide order dated 07.04.2026 and the same has been done by not complying with the provision of Section 60 of the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred as 'Act of 2023'). In support of his arguments, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of “**Tharammel Peethambaran and another Vs. T. Ushakrishnan and another**”, reported as 2026 SCC OnLine SC 169. It is submitted that the impugned order be set aside and the present revision petition be allowed and the application filed by respondent No.1/plaintiff be dismissed.

ANALYSIS AND FINDINGS

4. This Court has heard learned counsel for the petitioner and



has perused the paper-book and is of the opinion that the impugned order is in accordance with law and deserves to be upheld and the present revision petition is meritless and deserves to be dismissed for the reasons stated hereinafter.

5. It is not disputed that the respondent had filed a suit with the following prayers: -

“Suit for declaration to the effect that the plaintiff is co-owner in joint possession of 1/6th share out of the estate of Sohan Lal who was the owner in possession of the following properties:-

- a) Shop No.85, situate at New Grain Market, Moga, Tehsil & District Moga;*
- b) House No.396, Street No.6, New Town, Moga, Tehsil & District Moga;*
- c) Shop No. 108, New Grain Market, Moga, Tehsil & District Moga;*

and the defendants No.1 to 7 have no right, title or interest in the abovesaid properties;

AND

Further suit for declaration to the effect that the plaintiff as well as defendants No.8 to 14 are the legal and natural heirs of Sohan Lal and have inherited the estate of Sohan Lal and alleged Will dated 08.10.2013 alleged to be executed by Sohan Lal in favour of the defendant No. 8 Ram Gopal is illegal, null & void, forged, fabricated and the same is surrounded by various suspicious circumstances and the same does not affect the rights of the plaintiff and is liable to be set aside;

AND

Further suit for separate possession by way of partition by metes and bounds;

AND

Suit for permanent injunction restraining the defendants from alienating any part of the abovesaid properties by way of sale,



mortgage, deed, transfer, exchange or any other mode of transfer, illegally and forcibly on the basis of oral as well as documentary evidence.”

6. The plaint in the present case has been annexed as Annexure P1. There are fourteen defendants in the case and all have been proceeded against ex-parte except the present petitioner, who is defendant no.8. A perusal of the plaint would show that it was the case of the plaintiff that the parties constituted Joint Hindu Family and Nasib Chand was its Karta, who had died in the year 1975 and thereafter, his sons i.e. Sohan Lal and Jagdish Gupta constituted Joint Hindu Family. Further details which were relevant for consideration were given in the said plaint. Importantly, in para 4, it was specifically stated that there was a dispute after the death of Nasib Chand and the said dispute was resolved between the family of Nasib Chand about 30 years ago by way of oral family settlement and that the properties which had been mentioned in the headnote of the plaint had fallen to the share of Sohan Lal, who had taken the possession of the suit property and had become its owner and the other property i.e., factory premises had fallen to the share of Jagdish Lal. In para 5, it was specifically pleaded that the oral family settlement which had been effected between the parties, was reduced into writing on 26.02.2017 by way of 'Yaadasht Takseem' i.e. Memorandum of Partition and a copy of the said Memorandum of Partition dated 26.02.2017 was attached along with the plaint. The said paras 4 and 5, which are relevant for consideration, are reproduced hereinbelow: -

“4. That after the death of Nasib Chand, there was



dispute between the family. However, the said dispute was resolved between the family of Nasib Chand about 30 years ago by way of oral family settlement. In the said oral family settlement, the suit properties as detailed mentioned in the head note of the plaint had fallen to the share of Sohan Lal, who had taken the possession of the suit property at that time and became its owner and the other property i.e. Factory Premises mentioned above had fallen to the share of Jagdish Lal. Now the plaintiff alongwith the defendants No.8 to 14 have become the co-owners and in possession of the properties, which have fall tô the share of Sohan Lal and the other property i.e. Factory Premises has fallen to the share of defendants No.1 to 3 after the death of Jagdish Lal.

5. *That lateron, the abovesaid oral family settlement which had been effected between the parties about 25 years ago, **reduced into writing on 26.02.2017 by way of 'Yaadasht Takseem' i.e. Memorandum of Partition. Copy of 'Yaadasht Takseem' i.e. Memorandum of Partition dated 26.02.2017 is attached herewith. The defendants No.8 to 10 have also consented to the said Memorandum of Partition***

7. The Memorandum of Partition, which was annexed with the plaint, has been annexed by the petitioner as Annexure P-2 along with the present revision petition. A perusal of the vernacular of the said document would show that the same had been signed by 12 persons in addition to two witnesses. It was not the case of the plaintiff that the said document was a registered document nor it has been shown to this Court that such a document requires registration.

8. It has been highlighted on behalf of the petitioner that the petitioner has not signed the Memorandum of Partition. The said aspect also as per this Court for the limited purpose of considering whether respondent No.1 should be permitted to lead secondary evidence or not



would in fact be a point in favour of respondent No.1, as in case a forged and fabricated document had been produced, then, the signature of the petitioner could have been on the same and the mere fact that the signature of the petitioner was not there as per the case of the petitioner is an indicator in favour of respondent No.1 for the present limited purpose.

9. Immediately after the framing of issues, respondent No.1/plaintiff moved an application dated 17.02.2026 for allowing him to prove the Memorandum of Partition dated 26.02.2017. The pleadings as made in the plaint with respect to the fact that there was an oral family settlement and subsequently the same was reduced into writing on 26.02.2017, were reiterated in the said application. It was further specifically stated that the original 'Yaadasht Takseem' had been misplaced by the plaintiff and it was for the said reason that he could not produce the same. A reply was filed to the said application by the present petitioner in which contradictory pleas were taken. The contradiction in the pleas is apparent from the relevant portion of paras No.2 and 3 of the reply on merits. The relevant paras 2 and 3 of the reply (Annexure P-5) are reproduced herein below:

“2.....It is wrong and denied oral family settlement was reduced in to writing on 26.02.2017 by way of Yaadasht Taksim. As there is not signature of answering defendant on the above refer Yaadasht Taksim.

3. That this para of application is wrong and denied the original Yassasht Taksim is in possession of plaintiff and he intently not produced the same.”

10. At one stage, the petitioner had sought to deny the fact that



oral settlement was reduced into writing and at another stage he had stated that the original document was in possession of the plaintiff. The said pleas are apparently contradictory.

11. The trial Court vide impugned order dated 07.04.2026 had taken into consideration the arguments raised on behalf of respondent No.1/plaintiff to the effect that the original had been misplaced and was not traceable despite due efforts and the said document was stated to be material for just adjudication of the case. The trial Court was of the opinion that the foundational requirements in terms of Section 60(c) of the Act of 2023 had already been laid on behalf of the respondent No.1/plaintiff and since the said document was material for the adjudication of the case, thus, had allowed the application after specifically observing that veracity and evidentiary value of the document itself would be considered at the stage of trial and even the proof of its existence and loss would be proved during trial. The objections raised on behalf of the petitioner to the effect that the document was forged, unilateral and did not bear his signatures, were observed to be pertaining to the merits and admissibility of the document, which could not be conclusively adjudicated at that stage as the evidence was yet to be led. The said order is in accordance with law and deserves to be upheld.

12. Section 60 of the Act of 2023 provides that secondary evidence may be given of the existence, condition, or contents of a document with respect to cases enumerated in the said provision. Sub-clause (c) provides for a situation where the original has been destroyed



or lost.

13. A perusal of the plaint (Annexure P-1) as well as application (Annexure P-4) would show that the respondent No.1/plaintiff had laid a foundation of the said Memorandum of Partition/Yaadasht Takseem having been executed and in fact the copy of the said document was annexed along with the plaint itself. It was further specifically argued before the trial Court that the original had been misplaced and was not traceable despite due efforts.

14. In the present case, it is apparent that the said document is a crucial document for considering the case of respondent No.1/plaintiff and thus, if an opportunity is not given to the plaintiff to prove the said document in accordance with law, the same would be travesty of justice. The trial Court has vide a well reasoned order taken into consideration every aspect including the fact that no comment was made on the veracity or evidentiary value of the said document at that stage and the same in addition to the objection raised by the petitioner were kept open and it was further observed that proof of existence and loss would have to be established. Since apparently the said document is not a registered document and in case respondent No.1/plaintiff is not in possession of the original document, then, the only course open to respondent No.1/plaintiff is to prove the said document by leading secondary evidence. Further, once the said document is not a registered document, then, there is no question of respondent No.1/plaintiff to produce a certified copy of the same from the office of the sub-registrar. The document is stated to be



signed by 12 persons and also two attesting witnesses as per the case of the plaintiff. Thus, in view of the facts and circumstances, an opportunity has to be given to the plaintiff/respondent No.1 to make an endeavour to prove the said document in accordance with law and during the course of trial.

15. It would be relevant to note that as per the law laid down by the Coordinate Bench of this Court in the case of “**Madan Lal Versus Shankar and others**”, ***reported as 2021 (2) PLR 130***, it was observed that there is no requirement to seek prior permission of the Court before leading secondary evidence, although a practice has developed to seek prior permission before leading secondary evidence. However, the said practice is not supported by any statutory provision and, therefore, merely because prior permission has not been sought, the evidence which has come on the file in the form of secondary evidence cannot be ignored, if it fulfills the requirement of Section 65 of the Indian Evidence Act (presently Section 60 of the Act of 2023). The relevant portion of the said judgment is reproduced hereinbelow:

*“13. As regards the requirement of prior permission to produce secondary evidence, it may be noted that Chapter V of the Indian Evidence Act, 1872 provides that the party is required to produce primary evidence. However, Section 63 provides for and defines the secondary evidence in absence of primary evidence. Section 65 of the Indian Evidence Act, deals with the circumstances under which the secondary evidence can be led. The distinction between the primary evidence and secondary evidence is nature of evidence. **In absence of primary evidence, secondary evidence can be examined by the Court subject to fulfillment of the requirements of Section 65 of the Indian***



Evidence Act. There is no requirement that before leading secondary evidence, prior permission of the Court is required to be obtained. No doubt, a practice has developed to seek prior permission to lead secondary evidence and granted/refused by the Courts, however, this practice is not supported by the statutory provision. Therefore, merely because a prior permission has not been sought, the evidence which has come on file in the form of secondary evidence cannot be ignored, if it fulfills the requirement of Section 65 of the Indian Evidence Act.

XXX XXX XXX

17. ***This Court has come across various judgments passed by the Courts wherein different High Courts have taken a view that prior permission to lead secondary evidence is not required and the evidence so led by the party can be in the nature of primary evidence or secondary evidence. Even if it is assumed that formal permission is required, that can be granted by the Court while examining and evaluating the evidence. The practice of seeking prior permission by moving an application to that effect results in unnecessary delay of the trial. If the application is accepted or rejected, the order so passed by the trial Court is further challenged before the Higher Court which again results in delay of the trial. Such delay can be very well avoided by the Courts by examining the evidence and granting permission if required after satisfying that requirements of Section 63 and Section 65 of the Evidence Act stand complied with. Reference in this regard can be made to two judgments of the Delhi High Court, first, 2009 (32) RCR (Civil) 54, Sanyogta Prakash V. Dhira Bala Malhotra and others, second, 2009 (12) RCR (Criminal) 701, Prem Chandra Jain (deceased) represented by LR's Shri Bharat Bhushan Jain, Advocate and others V. Sri Ram (deceased) represented by LR's Shri Sunil Kumar Arora and others, the judgment passed by the Allahabad High Court in the case of Hameed and others V. Kanhaiya, 2004 AIR (Allahabad) 405. Reference in this regard can also be made to the judgments of this Court in the case Harjinder Singh V. Ranjit Kaur and others, 2016 (3) RCR (Civil) 229, Rajesh Yadav and others V. Balbir Singh and others 2014 (5) RCR (Civil) 941, Harbans Kaur and others V. Beant Kaur and others 2014 (9) RCR (Civil) 3009, Anupam Jain wife of Rakesh Jain V. Kubwant Gupta wife of***



Surinder Kumar and others 2016 (3) RCR (Civil) 220”

16. In the present case, the respondent No.1/plaintiff had even moved an application although there was no requirement of the same.

17. The Hon'ble Supreme Court in the judgment titled as **Tharammel Peethambaran (supra)** relied upon by the learned counsel for the petitioner had observed that there is no requirement that an application must be filed to lead secondary evidence and had further observed in para 20.7 that it is sufficient, if the party lays the necessary factual foundation for leading secondary evidence either in the pleadings or during the course of evidence. Para 20.7 of the said judgment is reproduced herein below: -

“20.7 There is no requirement that an application must be filed to lead secondary evidence. While a party may choose to file such an application, secondary evidence cannot be ousted solely because no application was filed. It is sufficient if the party lays the necessary factual foundation for leading secondary evidence either in the pleadings or during the course of evidence”

18. In the present case, as has been observed hereinabove, the factual foundation had been laid in the plaint as well as in the application.

19. It would be relevant to note that in the said case, the matter went up before the Hon'ble Supreme Court after a complete trial, whereas in the present case, the trial is yet to commence. The case of the defendants therein was that the plaintiff therein, who was the admitted owner of the property, had executed a power of attorney with the right to sell and they had sought to produce a photocopy of the same as Ex.B-2 and it was further the case of the defendants therein that they had sold the



property in favour of defendant No.2 therein and other defendant therein and defendant No.2 therein was the brother-in-law of defendant No.1 therein. On the other hand, it was case of the plaintiff therein that although he had executed a power of attorney Ex.A-4, which did not have clause with respect to selling of the property. The trial Court had decreed the suit of the plaintiff therein after comparing the power of attorney (Ex.A4) with the one used for executing the sale deed (Ex.B-2) and found that words providing for “sale” were added to the end of existing clauses and also took into consideration the spacing between the letters. The relevant portion of the judgment of the Supreme Court is reproduced herein below: -

“6. The Trial Court examined all the issues together, and the gist of the Trial Court’s findings is that the Trial Court compared the draft PoA (Exh. A-4) with the one used for the sale (Exh. B-2) and found that words providing for “sale” were added to the end of existing clauses. These additions lacked “cohesion” with the original document. It also noted that the spacing between letters in the added “sale” words was significantly different from the rest of the document (monospace vs. proportional), indicating they were inserted later. The 1st Defendant failed to produce the original PoA (Exh. B-2) despite being its holder. The Trial Court found his explanation that it was given to the Plaintiff’s husband to be inconsistent and contradictory. Under Section 33 of the Registration Act, 1908, a PoA used for executing sale deeds must be properly authenticated. The Trial Court held that since the PoA was unregistered and its genuineness was unproven, the resulting sale deeds (Exh. A-7 and A-8) were invalid.....”

20. It is thus apparent that in the above-said case after complete evidence was led and after parties were given due opportunities to lead



evidence and to cross-examine the witnesses, it was found by the trial Court on a close analysis of the evidence that Ex.B-2 which was a photocopy of the power of attorney was not an authentic document. The 1st Appellate Court however allowed the appeal of the defendants, but on further appeal, the Hon'ble High Court set aside the judgment of the 1st Appellate Court and upheld the judgment of the trial Court after reiterating the observations made by the trial Court. The Hon'ble Supreme Court also upheld the findings of the trial Court as well as of the High Court by dismissing the appeal filed by defendants No.1 and 2 therein. The Hon'ble Supreme Court had further considered the cross-examination of the main defence witness who in his cross-examination had admitted that he did not know where the original power of attorney was and that it lacked the signatures of the witness and contained no notary endorsement. In the said circumstances, after due trial, which has not commenced in the present case, it was observed that the said document had not been proved in accordance with law and the judgments of the trial Court and High Court were in accordance with law. Thus, the said judgment would not further the case of the petitioner.

21. It would be relevant to note that even the ingredients which are required to be considered for permitting a party to lead secondary evidence are met in the present case, as the foundational facts as stated in the plaint and in the application, which have been detailed herein-above would bring the case of the plaintiff within the parameters of Section 60 (c) of the Act of 2023.



22. The Hon'ble Supreme Court in the case of “*Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*”, reported as (2010) 8 *Supreme Court Cases* 329, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

23. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order dated 07.04.2026 is upheld and the present revision petition being meritless, deserves to be dismissed and is



dismissed.

24. It is clarified that the present order should not be construed as an estoppel against the petitioner from raising all defences which are available to him during the course of trial and also the defences which have been kept open by virtue of the impugned order and in case the said objections are raised at the relevant time, the trial Court would consider the same in accordance with law.

April 30, 2026
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes